sible source of relief. It is not contended that the executive can without statutory authority remove persons from the state.[5] But Mr. McCarthy believes that the states may legislate to produce this result. This opinion seems correct. It is disputed on the ground that, because interstate rendition depends upon the federal Constitution, no person can be surrendered unless the case falls within the constitutional provision.[6] This is fallacious. To imprison or to remove from its territory such persons as it sees fit is unquestionably an inherent power of every sovereignty. Before the Constitution, or in the absence of any provision on the subject, each state in the exercise of its sovereignty could surrender criminals or refuse to do so at its discretion. It does not follow, then, that because the Constitution requires it to surrender them in some cases, it has lost its discretion in the remaining cases. Otherwise no effect would be given to the Tenth Amendment, which reserves to the states all power in local affairs not granted. Again, it is argued that the view contended for would be destructive of national homogeneity, as making possible agreements between some states to the exclusion of others.[7] That argument would apply equally to any legislation conferring favors on outsiders. For example, some states have lent to outsiders their machinery to secure testimony from persons within their boundaries;[8] but that practice has never been decried, nor has our national homogeneity disappeared. In short, statutes of this nature need not have the suggested effect — it is only possible that they may be so drawn as to have such effect. At least half of the dicta[9] and the only decision[10] found at all in point are with the view advocated. It is also supported by several analogies. Thus the Constitution does not require the states to hold fugitives from justice before demand is made, but still the states may do so.[11] And the states may provide the method of the arrest[12] — a fact which again shows that the states are not excluded from legislating on this subject.

RIGHTS ARISING FROM MISTAKE OF LAW. — It is well settled in both England and the United States that money paid under a mistake of fact can in general be recovered.[1] It is generally stated in the text-books that in neither country can there be a recovery of money paid under a mistake of law.[2] In a recent article Mr. Corry Montague Stadden maintains that there is in England at the present day, as well as in France and Germany, no difference between the two classes of cases. *Error of Law*, 7 Colum. L. Rev. 476 (November, 1907). Clearly until 1802, as Mr. Stadden points out, no distinction was made either in law or in equity. Lord Mansfield in 1786 said that the rule had always been that "if a man has actually paid down what the law would not have compelled him to pay, but what in equity and conscience he ought, he cannot recover it again; but where money is paid under a mistake, which there was no ground to claim in conscience, the party may recover it back again."[3] But in 1802 in a case where the question was whether money paid under a mistake of law could be recovered, Lord Ellenborough, misled by counsel to think there was no authority for allowing a recovery in such a case, refused relief.[4] Though, as

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[5] *Ex parte* Morgan, *supra*, 301.
[6] People *v.* Hyatt, 172 N. Y. 176, 182.
[7] *In re* Kopel, 148 Fed. 505, 506.
[8] For example, N. Y. Code Civ. Proc., §§ 914–919.
[9] See State *v.* Hall, 115 N. C. 811, 818; Matter of Fetter, 23 N. J. L. 311, 315.
[10] Matter of Romaine, *supra*.
[11] Commonwealth *v.* Tracy, 5 Met. (Mass.) 536. See also Knowlton's Case, 5 Cr. L. Mag. 250, 254.
[12] *Ex parte* Ammons, 34 Oh. St. 518.

[1] See 14 HARV L. REV. 467.
[2] 9 Cyc. 403; Keener, Quasi-Contracts, 86.
[3] Bize *v.* Dickason, 1 T. R. 285.
[4] Bilbie *v.* Lumley, 2 East 469.

the author points out, in a later case [5] he changed his mind when the precedents were brought to his attention, his earlier decision was followed by Mr. Justice Gibbs in a case [6] which is generally said to have settled the law for England.

Various reasons have been given for refusing to allow recovery in these cases. (1) The maxim *ignorantia juris non excusat* is quoted as the basis of the doctrine. But the meaning of this maxim is that one who has done a wrong cannot excuse himself on account of his ignorance of the law — it applies to cases in which one has committed a crime, or a tort, or a breach of contractual or other obligation.[7] In the cases under discussion the plaintiff has done no wrong; he is merely seeking that to which in conscience he is entitled. (2) It is said that every one is presumed to know the law. This is probably the same maxim put into terms of fiction. There is no such presumption in fact or in law.[8] (3) It is said that there is no means of trying a man's knowledge of the law. But the existence of such knowledge is an issuable fact even in criminal cases where a specific intent is of the essence of the crime.[9] (4) It is said that mistake of law would be urged in every case. The danger is equally great in the case of mistake of fact. But here, as in such cases, it should not be enough merely to allege mistake; the burden of proof should be on the plaintiff. (5) It is said that allowing a recovery would put a premium on ignorance. But this argument applies equally to mistake of fact. Besides, it is no great inducement to a man to pay money because he knows that if he can successfully prove a mistake he can get it back again. (6) Lastly, it is said that if a recovery is allowed litigation will be multiplied. This argument applies as strongly to cases of mistake of fact. Moreover, it is not the object of the law to prevent the litigation of just claims. On the whole it would seem that if there is a mistake either of fact or of law there should be a recovery unless there is a legal or moral obligation to pay, as in the case of a debt barred by the statute of limitations, or unless the defendant acts in such a way in reliance on the payment that the parties can no longer be put in *statu quo*.

Furthermore, aside from all arguments on principle, Mr. Stadden asserts, after making a pretty thorough analysis of the English cases, that in England the law has by degrees returned to the older view. It is true that it has been held that money paid under a mistake of law to an officer of the court may be recovered.[10] And a distinction has been taken between mistake of private rights and of general law,[11] though Sir Frederick Pollock maintains that this distinction does not apply to cases of money paid.[12] But in spite of these encroachments and of one or two decisions [13] and a few dicta [14] to the effect that equity may give relief against mistake of law, the general rule does not appear to have been changed. There is no case where a recovery has been allowed of money paid under mistake of law, except when paid to an officer of the court. On the contrary the modern English cases, like those in this country, seem still to cling to the distinction between mistake of law and of fact.[15]

AUSTRALIAN CONSTITUTION, THE PRIVY COUNCIL AND THE. *W. Harrison Moore.* Adversely criticizing a recent holding that the salary of an Australian officer is subject to taxation by Victoria. 23 L. Quar. Rev. 373. See 20 HARV. L. REV. 494.

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[5] Perrott *v.* Perrott, 14 East 423.
[6] Brisbane *v.* Dacres, 5 Taunt. 143.
[7] Keener, Quasi-Contracts, 90.
[8] Queen *v.* Mayor of Tewkesbury, L. R. 3 Q. B. 629.
[9] Regina *v.* Twose, 14 Cox C. C. 327.
[10] *Ex parte* James, L. R. 9 Ch. 609.
[11] Cooper *v.* Phibbs, L. R. 2 H. L. 149.
[12] Pollock, Contracts, 7 ed., 457.
[13] Daniell *v.* Sinclair, 6 App. Cas. 457.
[14] See Stone *v.* Godfrey, 5 De G. M. & G. 76; Rogers *v.* Ingham, L. R. 3 Ch. 351.
[15] Midland, etc., Ry. *v.* Johnson, 6 H. L. Cas. 798; Eaglesfield *v.* Marquis of Londonderry, 4 Ch. D. 693; Henderson *v.* Folkestone W. W. Co., 1 T. L. R. 329.

COMMON LAW JURISDICTION OF THE UNITED STATES COURTS, THE. *Alton B. Parker.* 17 Yale L. J. 1.

CONSTITUTION AND THE CORPORATIONS, THE. *Charles F. Amidon.* Contending that the Constitution can and should be so interpreted as to allow federal control of corporations of national scope. 14 The Bar 19.

CONSTITUTIONAL QUESTION SUGGESTED BY THE TRIAL OF WILLIAM D. HAYWOOD, A. *Charles P. McCarthy.* 19 Green Bag 636. See *supra.*

CONTEMPT OF COURT, STATEMENTS BY ATTORNEYS IN ARGUMENTS, PLEADINGS, AND BRIEFS PERTAINING TO RULINGS AND DECISIONS, AS. *Sumner Kenner.* 65 Cent. L. J. 331.

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DAMAGES IN THE PUBLICIZATION OF BRIDGES. *Anon.* Discussing the proper measure of damages when a toll bridge is taken by eminent domain. 12 The Forum 37.

DEBENTURE-HOLDERS AND EXECUTION CREDITORS. *Anon.* Collecting the recent English authorities. 29 L. Stud. J. 240.

DIPLOMATIC PROTECTION OF CITIZENS ABROAD (Continued). *Gaston de Leval.* Suggesting a system to ensure protection. 42 L. J. 617.

EIGHT-HOUR LAW WITH RESPECT TO GOVERNMENT CONTRACTS. *Anon.* Adversely criticizing a recent case holding the federal eight-hour law constitutional. 35 Nat. Corp Rep. 301.

EQUITY JURISDICTION, WORD "NOT" AS A TEST OF, TO ENJOIN A BREACH OF CONTRACT. *Henry Schofield.* Reviewing the authority on implied negative contracts and arguing that the distinction made in recent Illinois cases between express and implied contracts is not to be supported. 2 Ill. L. Rev. 217. See 19 HARV. L. REV. 476.

ERROR OF LAW. *Corry Montague Stadden.* 7 Colum. L. Rev. 476. See *supra.*

HAGUE CONFERENCE, THE LEGAL RESULTS OF THE. *Norman Bentwich.* Especially considering the possible adoption of an international prize court. 42 L. J. 664.

INTERNATIONAL PRIZE COURT, AN. *Amos S. Hershey.* Discussing the advantages of such a court and the difficulties in the way of its establishment. 19 Green Bag 652.

INTERSTATE COMMERCE, STATE INTERFERENCE WITH. *H. P. Burnett.* A careful analysis of the subject with citation of authority. 13 Va. L. Reg. 497.

"JUDGE-MADE" LAW, A CENTURY OF. *William B. Hornblower.* 7 Colum. L. Rev. 453.

JUDICIAL LIABILITY. *W. W. Lucas.* A clear statement of the English law on liability of judicial officers for negligence, *mala fides*, etc. 32 L. Mag. & Rev. 417.

JUDICIARY, THE FUNCTION OF THE (Continued). *Percy Bordwell.* Arguing that the Supreme Court should not declare political laws unconstitutional. 7 Colum. L. Rev. 520.

LETTERS, THE RIGHT TO USE. *Anon.* A general discussion based upon the authorities. 52 Sol. J. 5.

MUNICIPAL SECURITIES, THE BETTER PROTECTION OF. Giving reports of two commissions recommending methods for further protection. 24 Bank. L. J. 785.

NEGOTIABLE INSTRUMENTS ACT, THE NEW. *Julian W. Mack.* Pointing out the most recent changes in the Illinois Negotiable Instruments Law. 2 Ill. L. Rev. 265.

NEGOTIABLE INSTRUMENTS ACT, THE NEW ILLINOIS. *Louis M. Greeley.* 2 Ill. L. Rev. 145.

PARTIAL PERFORMANCE OF ENTIRE CONTRACTS, RIGHT OF RECOVERY FOR. *Graham B. Smedley.* A good collection of authority. 65 Cent. L. J. 292.

STOCK, WATERED, AT COMMON LAW. *Wm. C. White.* Contending that stockholders who have received paid up stock without full payment, should be made liable only by legislation. 5 The Law 81, 103.

TREATIES, EFFECT OF "MOST-FAVOURED-NATION" CLAUSE IN COMMERCIAL. *Sir Thomas Barclay.* 17 Yale L. J. 26.

WAIVER OF EXEMPTION FROM SERVICE OF PROCESS BY REASON OF ATTENDANCE UPON COURT BY NON-RESIDENT PARTY OR WITNESS. *Anon.* Enumerating the methods by which waiver may be made. 35 Nat. Corp. Rep. 304.

YOUNG *v.* GROTE. *Thomas Beven.* Contending that the drawer of a check who negligently gives opportunity for raising it should be liable. 23 L. Quar. Rev. 390. See 20 HARV. L. REV. 139.